BRITISH PURCHASES OF WAR SUPPLIES IN THE UNITED STATES.

BY W. L. PENFIELD.

I.

THE Government of the United States has not denied nor granted, either to Great Britain or to the South African republics, any right or privilege which is not equally conceded or refused to the other.

The duty of neutrality implies that the neutral state is equally friendly to and at peace with both belligerents, treating both alike, not conceding or refusing to the one what it does not equally concede or refuse to the other. The neutral state takes no notice of the merits or justice of the cause, nor of whether one or the other is or is not the more powerful on sea or on land. Its attitude is that of a disinterested spectator of the conflict, and its only legal concern and duty is to keep the rules which the law of nations has prescribed to govern the conduct of neutrals and belligerents toward each other.

The moment the neutral government considers the justice of the cause, with a view to action in behalf of the one or the other belligerent, it ceases to be neutral; it intervenes, and itself becomes a belligerent. Its right to act with reference to the conflict, as a neutral state, ends with the offer of mediation.

The accepted principle was stated by John Quincy Adams:

"By the usual principles of international law, the state of *neutrality* recognizes the cause of both parties to the contest as *just;* that is, it avoids all consideration of the merits of the contest. But when, abandoning that neutrality, a nation takes one side in a war of other parties, the first question to be settled is the *justice* of the cause to be assumed."

There appears to be not a little confusion of ideas with regard to the duties actually owing by a neutral state, and the duties

assumed or supposed to be owing by its citizens or subjects to the belligerent states.

The law of nations makes a wide distinction between the right of the state itself to aid either belligerent, by the sale to it of arms and other military supplies, and the right of its citizens to make such sales in the ordinary course of commerce. The latter was not prohibited by the Treaty of Washington, nor is it forbidden by the law of nations. The neutral state is at peace with the belligerents, and its citizens are rightfully engaged in the usual pursuits of peace. They are not to stop their business of planting, producing and selling as often as a war breaks out between foreign states. They rightfully assume that their government is at peace; that they, as citizens of the United States, for example, owe allegiance only to its laws, and these forbid their acceptance and exercise, or delivery of, a commission, within the jurisdiction of the United States, to serve a foreign state in a war against another state with which the United States is at peace; forbid their enlistment, or procuring others to enlist, within the jurisdiction of the United States, to serve abroad under conditions above stated; forbid their fitting out and arming, or attempting or procuring or being knowingly concerned in the furnishing, fitting out or arming of, or serving on or in, any vessel intended for employment in the service of either belligerent; forbid their increasing or augmenting or procuring, or being knowingly concerned in increasing or augmenting the force or increasing the equipment of, any such ship of war, cruiser or armed vessel for the uses above stated; forbid their beginning, setting on foot, providing or preparing the means for, any military expedition or enterprise to be carried on from thence against any other government, colony, district or people with whom the United States is at peace. These are duties prescribed by the municipal law of the United States, and the penalty for their violation can not be visited on citizens of the United States by any foreign government.

In short, the citizens or subjects of one state abiding at home owe no duties to any foreign state, in war or peace. If they go abroad, they are subject to the laws of the state wherein they sojourn; if they engage in war against a foreign state, they accept the corresponding risks, according as their service is regular or irregular; they forfeit thereby the protection of

their own government, and are subject to the rules of military warfare.

But the state, as a member of the commonwealth of nations, owes certain duties to other states which vary according to the fact whether those states are at peace or war.

II.

NEUTRAL POLICY OF THE GOVERNMENT OF THE UNITED STATES BEFORE THE GENEVA ARBITRATION.

Under the Presidency of Washington, the lines of the national policy of neutrality toward the belligerent states were laid down in May, 1793, by Mr. Jefferson, in instructions to the United States Minister to Great Britain:

"Our citizens have always been free to make, vend, and export arms. It is the constant occupation and livelihood of some of them. To suppress their callings, the only means, perhaps, of their subsistence, because a war exists in foreign and distant countries, in which we have no concern, would scarcely be expected. It would be hard in principle and impossible in practice. The law of nations, therefore, respecting the rights of those at peace, does not require from them such an internal derangement in their occupations. It is satisfied with the external penalty pronounced in the President's proclamation, that of confiscation of such portion of these arms as shall fall into the hands of the belligerent Powers on their way to the ports of their enemies."

It was likewise with the President's approval that Alexander Hamilton, Secretary of the Treasury, issued in August, 1793, a Treasury circular announcing that:

"The purchasing within and exporting from the United States, by way of merchandise, articles commonly called contraband, being generally warlike instruments and military stores, *is free to all the parties at war, and is not to be interfered with.*"

These rules have been many times asserted since then in Presidential Messages and in instructions of Secretaries of State. While always conceding that the citizen thus trading takes the hazard of confiscation of the property sold, it has equally been asserted, both by the United States and Great Britain, that such sale does not involve any violation of the duty of state neutrality. The doctrine was declared in various forms by Pickering, Monroe, Adams, Marcy, Pierce, Seward, Grant and Fish. It was declared by Chancellor Kent; and also by the Supreme Court of the United States, in the case of the "Bermuda," in an opinion rendered in 1865, by Chief-Justice Chase, at a time when the United

States Government and the Chief Justice were most keenly alive to the mutual rights and duties of belligerents and neutrals. The Court said that:

"Neutrals in their own country may sell to belligerents whatever belligerents choose to buy; . . . . neutrals must not sell to one belligerent what they refuse to sell to the other; . . . . nor prepare, nor suffer to be prepared, within their territory, armed ships or military or naval expeditions against either."

If the doctrine were otherwise, under the law of nations, the conditions of peace of the neutral state would be almost more burdensome than the state of war between the belligerents; as, in case of war between two great European Powers, like Great Britain and Germany, if it were forbidden to citizens of the United States to sell to either belligerent all articles which might be contraband of war, it would substantially annihilate our commerce; while the burden of policing with ships and soldiers the thousands of miles of our sea-coast, would make the state of peace perhaps even more expensive than the costs of war.

The attitude of the United States Government toward Great Britain during the Civil War and before the Geneva Arbitration Tribunal was not only consistent with, but a reaffirmance of, this doctrine; as it was with the doctrine announced by Jefferson, and approved by Washington,—that the building, equipping and arming of vessels in the ports of a neutral state, to cruise against any belligerent state with which it is at peace, is a breach of neutral duty. This view was also declared by Marshall, Monroe, Clay, Buchanan, Clayton, Pierce, Fish and Evarts.

Both rules were affirmed by General Grant in the neutrality proclamations issued August 22d and October 8th, 1870, during the Franco-Prussian War—by the assertion, on the one hand, that all citizens of the United States "may lawfully, and without restriction by reason of the aforesaid state of war, manufacture and sell within the United States, arms and munitions of war and other articles ordinarily known as 'contraband of war'"; and, on the other hand, by prohibition of the fitting out and arming of any ship or vessel for or in the service of either belligerent, or increasing or augmenting the force or armament of such ship, or setting on foot or preparing the means for any military expedition against either of the belligerents; and forbidding the use of the territorial waters of the United States for the purpose of pre-

paring for hostile operations against either belligerent, and forbidding the use of such waters by the armed vessels of either belligerent for such purpose.

III.

THE GENEVA ARBITRATION.

The complaint of precipitate concession of belligerent rights to the Confederacy made by the United States against the British Government was not made the basis of an independent claim; but it was urged in support of the claims of indemnity which were laid against Great Britain on the ground of negligence (1) in permitting the building, manning, arming and equipment of the Confederate cruisers in British ports; and (2) in the subsequent complicity of the British Government in the furnishing of supplies to the cruisers.

Article VI. of the Treaty of Washington provided that:

"A neutral Government is bound:

"First, to use due diligence to prevent the fitting out, arming, or equipping, within its jurisdiction, of any vessel which it has reasonable ground to believe is intended to cruise or carry on war against a Power with which it is at peace; and also to use like diligence to prevent the departure from its jurisdiction of any vessel intended to cruise or carry on war as above, such vessel having been specially adapted, in whole or in part, within such jurisdiction to warlike use."

Rule 2. "Not to permit or suffer either belligerent to make use of its ports or waters as the base of naval operations against the other, or for the purpose of the renewal or augmentation of military supplies or arms, or the recruitment of men."

Rule 3. "To exercise due diligence in its own ports and waters, and as to all persons within its jurisdiction, to prevent any violation of the foregoing obligations and duties."

The last clause of the Article binds the high contracting parties "to observe these rules as between themselves in future, and to bring them to the knowledge of other maritime Powers and to invoke them to accede to them."

The question has been raised whether the port of New Orleans is being used, in contravention of Rule 2, "as the base of *naval* operations," or "for the purpose of the renewal or augmentation of military supplies." The question is founded in a complete misconception of the meaning and intendment of Rule 2, as expressly declared and interpreted by both governments before the Geneva Arbitration Tribunal. The meaning of the rule is not

to be gathered from garbled extracts. The rule is to be construed in its entirety, in connection with Rule 1, and in the light of the common and contemporaneous interpretation of it by the two governments, defining its meaning and application.

In his learned work on International Arbitrations, Professor Moore points out that, after the treaty was negotiated, Lord Russell suggested that the second rule "might prevent the sale, by a neutral or in a neutral country, of arms and other military supplies in the ordinary course of commerce"; but Mr. Fish replied that "the President understood and insisted that the rule did not prevent the open sale of arms or military supplies in the ordinary course of commerce, as they were sold to the United States in England during the Civil War"; and that "the United States in bringing the rules to the knowledge of other Powers and asking their assent to them, would insist that such was their meaning."

The rule was never intended to involve a departure from the traditional policy of the United States, which, as a manufacturing and producing nation, generally at peace, is most deeply interested in maintaining, as far as is consistent with neutral duty, the ordinary rights of commerce. The neutral state is at peace with both belligerents; and its citizens, subject to the law of blockade and the risks of trade in contraband of war, have a perfect right to continue their ordinary pursuits. This was the declared view of this government in its controversy with Great Britain over the construction, equipment, and supply in British ports of cruisers of the Confederate States. This interpretation of Rule 2 was given by the United States before the Geneva Arbitration Tribunal, in clear, precise and unmistakable terms, as follows:

"The second rule provides that a neutral government is bound not to permit or suffer either belligerent to make use of its ports or waters as the base of naval operations against the other, or for the purpose of the renewal or augmentation of military supplies or arms, or the recruitment of men. *A question has been raised whether this rule is understood to apply to the sale of military supplies or arms in the ordinary course of commerce. The United States do not understand that it is intended to apply to such a traffic.* They understand it to apply to the use of a neutral port by a belligerent for the renewal or augmentation of such military supplies or arms, *for the naval operations* referred to in the rule."

In order to show the violation by Great Britain of her neutral duties, in this particular and within the meaning of the rule, the counsel for the United States put in evidence before the Geneva Arbitration an extract from a speech of Earl Russell, Secretary of State for Foreign Affairs, as follows:

"It has been usual for a Power carrying on war upon the seas to possess ports of its own in which vessels are built, equipped, and fitted, and from which they issue, to which they bring their prizes and in which those prizes, when brought before a court, are either condemned or restored. But it so happens that, in this conflict, the Confederate States have no ports except those of the Mersey and the Clyde, from which they fit out ships to cruise against the Federals."

They also put in evidence the journal of the Confederate steamer, "Florida," and accentuated this extract touching its entry at Nassau: "*We took on board coal and provisions to last us for several months*"—showing that she had made use of a neutral port as a base of naval operations and for the augmentation of the ship's supplies.

The contention of the United States Government was that "British territory was, during the whole struggle, the base of the *naval* operations of the insurgents." In summing up the case for the United States, stress was laid on the fact that:

"During the whole course of the struggle in America, of nearly four years in duration, there has been no appearance of the insurgents as a belligerent on the ocean excepting in the shape of British vessels, constructed, equipped, supplied, manned, and armed in British ports."

The same interpretation of Rule 2 was placed upon it by the British Government. The language used in the argument of its case was:

"The second of the above rules is understood by Her Majesty's Government as prohibiting the use of the ports or waters of the neutral for the renewal or augmentation of military supplies or arms, *only when such supplies or arms are for the service of a vessel cruising or carrying on war, or intended to cruise or carry on war, against either belligerent; and as not prohibiting any sale of arms or other military supplies in the ordinary course of commerce; and Her Majesty's Government have no reason to believe that it is otherwise understood by the Government of the United States.*"

After the statement of both governments had been openly made to the Arbitration Tribunal and freely considered, it ap-

peared that there was great divergence of view as to the scope of the meaning and application of the phrase "due diligence," which was a bone of contention throughout all the stages of the controversy. But as to the meaning and application of Rule 2, there was no difference of opinion between the two governments.

Now, it should be stated parenthetically that the first Article of the Arbitration Treaty formulated the matter which the two governments agreed to submit to arbitration, namely: Differences between the two governments "growing out of the acts committed by the several vessels which have given rise to the claims generically known as the 'Alabama Claims.'"

After full consideration by the United States Government of the interpretation already placed on Rule 2 by the two governments in their respective statements of the case, Mr. Evarts said in reply:

"The three rules of the Treaty furnish the imperative law as to the obligations of Great Britain *in respect of each of the vessels which is brought under review.* The moment that it appears that a vessel is, in itself, *within the description of the first Article of the Treaty,* as being one of the several vessels which have given rise to the claims generically known as the 'Alabama Claims,' it becomes a subject to which the three rules are applicable. . . . Whatever may be the scope and efficacy of the second Rule and of the third Rule, *in future or in general,* for the purposes of the present Arbitration the *subjects to which either of them can be applied, ... must be embraced* within the limitation of the first Article of the Treaty, and so, connected with some or one of the several vessels which have given rise to the claims generically known as the 'Alabama Claims.' But in regard to any such vessel, the general injunctions of these two Rules furnish, in their violation, a ground for the inculpation of Great Britain, and its condemnation to responsibility and reparation therefor to the United States. . . . The second Rule is as extensive as the general subject, under the law of nations, of the use of ports and waters of the neutral as the base of naval operations, or for the renewal or augmentation of military supplies, or the recruitment of men. . . . What are really commercial transactions in contraband of war are allowed by the practice of the United States and of England equally, and are not prohibited as hostile acts by the law of nations; *and it is agreed between the two countries that the second Rule is not to be extended to embrace by any largeness of construction* mere commercial transactions in contraband of war. . . . Whenever the neutral ports, places, and markets are really used as the bases of *naval* operations, when the circumstances show that relation, and that direct and efficient contribution, and that complicity and that origin and authorship, which exhibit the belligerent himself drawing military supplies for the purpose

of his *naval operations* from neutral ports, *that* is a use by a belligerent of neutral ports and waters as a base of his naval operations, and is prohibited by the second Rule of the Treaty."

Hence, it was said, a war-ship of either belligerent "cannot make an ambush for itself in neutral waters, cannot lie at the mouth of a neutral river to sally out to seize its prey, cannot lie within neutral waters and send its boats to make captures outside their limits."

In support of the contention that British ports were used as a base of naval operations of Confederate cruisers, Mr. Evarts put the case of the "Shenandoah," which "illustrates by its career, on a large scale, the project of a belligerent, in *maritime* war, which sets forth a vessel and furnishes it complete for war, plans its naval operations and executes them, and all this from neutral (British) ports and waters as the only base and a sufficient base."

Illustrating the meaning and application of Rule 2, Mr. Evarts quoted from a speech of Mr. Gladstone in 1862, that "Jefferson Davis and other leaders of the South have made an army; they are making, it appears, a *navy*." He also stated the position of our Government in the words of Secretary Fish, September 25, 1869, that "the rebel counsels" have made Great Britain "the arsenal, the navy-yard and the treasury of the insurgent Confederates." And Mr. Evarts said:

"That was the controversy between the two countries, for the solution of which the Rules of this Treaty and the deliberations of this Tribunal were to be called into action; and they were intended to cover and do cover all the forms in which this use of Great Britain for the means and the opportunities for keeping on foot these maritime hostilities was practised. The first Rule covers all questions of the *outfit* of the cruisers; the second Rule covers all the means by which the neutral ports and waters of Great Britain were used as bases for the rebel *maritime operations of these cruisers*, and for the provision, the renewal, or the augmentation of *their* force of armament, munitions, and men. Both nations so agreed."

The two governments were therefore agreed as to the true meaning of the rule. The only query suggested was by Mr. Evarts, touching "the scope and efficacy of the second Rule and of the third Rule, in future or in general." The Arbitration Tribunal accepted the interpretation of Rule 2 adopted by the two governments, without discussion.

IV.

THE FATE OF THE THREE RULES.

As already stated, there was much discussion and divergence of opinion between the two governments, during the Geneva Arbitration, as to the scope of meaning and legal application of the phrase "due diligence," with reference to the duty of the neutral state not to allow in a neutral port the construction, equipment, manning and taking of coal and supplies for a war-ship of either belligerent. The extent to which this had been done and permitted to be done by the Confederate cruisers, the Confederacy being without available ports of its own and making use of British ports as the base of its naval operation, was the grievance complained of. The whole subject of neutral and belligerent right and duty, as regards the sale by citizens of a neutral state of military supplies in the ordinary course of commerce, on the one hand, and, on the other, the limitations of international law upon the period of permissible stay of a belligerent cruiser in a neutral port, and upon the augmentation of its force, and upon the amount of coal and supplies it might be allowed to take, was exhaustively considered by the ablest body of statesmen and jurists whose attention was ever centred at one time upon that subject, when it involved the momentous issue of war between the two English-speaking nations. During the epoch which ended with the Geneva Arbitration, the Chief of this nation was a man who perfectly understood all the necessities and rights of war, and whose words, "Let us have peace," did not indicate any misunderstanding of the mutual rights and duties of neutrals and belligerents. The discussion was conducted on the part of the United States by such men as Seward, Adams, Fish, Cushing, Evarts, and Waite; and, on the part of Great Britain, by such men as Russell, Gladstone, Harcourt, and Palmer, and on the seat of Arbitration sat Cockburn for Great Britain and Adams for the United States.

It may be said, without the rashness of presumption, that, when such adversaries were especially charged, on either hand, with the vigorous assertion and jealous safeguarding of the rights and duties of neutrals, they "hewed to the line," when they all "agreed" that "the second Rule is not to be extended to embrace by any largeness of construction mere commercial transac-

tions in contraband of war." This statement by Mr. Evarts came after the same interpretation had been given by the British Government of the meaning of the Rule, with the added statement that "Her Majesty's Government have no reason to believe that it is otherwise understood by the Government of the United States."

The course of the discussion had made it evident that the Rules would have to be recast, if they were to become workable "in future and generally," and if they were to receive the acceptance of the two governments and the adhesion "of other maritime Powers."

Professor Lawrence, a publicist of high authority and who is notable for his accuracy of statement, both of law and fact, says:

"The two Powers immediately concerned have never been able to settle the terms of a joint note inviting others to accede to them, and since 1876 have given up the attempt to do so. The governments of Germany and Austria let it be known beforehand that their consent would be withheld; and no state has shown itself eager to adopt the new formulæ."

Wharton says:

"The 'rules' themselves may be regarded as setting forth, in terms studiously general, certain propositions which few publicists would disapprove. But the treaty does not by itself give these rules the authority of a code, and this for the following reasons: (1) The 'rules' were only to be binding as rules of international law if accepted by the leading Powers, which they have not been. (2) They are not binding as permanent and absolute rules on England and the United States, because neither England nor the United States has ever considered them to be so binding; and because by the treaty that proposed them as temporary rules of action for guidance of a special and exceptional court, the permanent adoption is dependent upon their communication to the great European Powers, which communication has never been made. (3) Even if the 'rules' be binding, it must be remembered that, on the topics discussed in the text, they are couched in a vagueness which, no doubt, was intentional, and which leaves open the main points of dispute. It is to be observed, in addition, that, while the weight of authority is that the 'rules' themselves contain propositions which are generally unobjectionable, such is not the case with the decisions of the majority of the Arbitrators, who interpret the 'rules' so as to impose on neutrals duties not only on their face unreasonable, but so oppressive as to make neutrality a burden which no prudent nation, in cases of great maritime wars abroad, would accept. It will be at once seen that these 'rules,' though leading to an award superficially favorable to the United States in the large damages it gave, placed *limitations on the rights of neutrals greater even than those England had endeavored to impose during the Napoleonic wars, and far greater than those which the United States had ever pre-*

viously been willing to concede. If such limitations are to be strictly applied, the position of a neutral . . . will be much more perilous and more onerous, in case of war between maritime Powers, than that of a belligerent. Our Government, to fulfil the obligations cast on it by these rules, would be obliged, not only to have a strong police at all its ports to prevent contraband articles from going out to a belligerent, but to have a powerful navy to scour the seas, to intercept vessels which might elude the home authorities and creep out carrying such contraband aid. Not only our Atlantic and Pacific coasts, but our boundary to the north and to the south contains innumerable points at which belligerents can replenish their contraband stores; and nothing but a standing army or navy greater than those of any European Power would prevent such operations." He adds that "the 'three rules' were temporary and exceptional and were to be only effective in case of ratification by the great Powers, which ratification was never given, as is maintained by Mr. Fish in his letters to Sir E. Thornton, of May 8 and September 18, 1876, communicated by Mr. Hayes in his message to the Senate of January 13, 1879. The same position was taken in the House of Commons in 1873 by Mr. Gladstone, Sir W. Harcourt, Mr. Disraeli, and the Attorney-General."

It is not the mere *fact* that some provisions, horses and mules may have been sold by citizens of the United States to agents of either belligerent and shipped from the port of New Orleans, but it is rather the *extent* of the sales and shipments, which has attracted comment and criticism. But the dimension of such transactions is not, and cannot possibly be made, the criterion of judgment on the question whether there has been a violation of neutral duty. If all the sales and shipments of contraband of war may not be lawfully conducted from one port, may they be distributed and lawfully conducted from a multitude of ports? The result is the same. The duty to prohibit and prevent in the one form would be not less solemn and imperative in the other. And the duty to prevent such sales and shipments or transportation from all points along our national boundary would, in case of war between two great European Powers, lay upon the United States the obligation of policing accordingly, and of preventing such sales and transportation, or the obligation to pay enormous indemnities for damages to either or both of the belligerents occasioned by the failure of the United States to do so. To prohibit the shipment or transportation in effect prohibits and prevents the sale of all the products of our factories and farms which may be destined for the military uses of either belligerent, and, in case of a great European war, would paralyze our com-

merce. No such rule of neutral duty is known to the law of nations.

V.

PRACTICE OF NATIONS SINCE THE GENEVA ARBITRATION.

As already stated, the United States and British Governments were agreed in their interpretation of Rule 2. The position of our government, during the discussions which led up to the arbitration, was indicated by the Proclamation of President Grant, in 1870, that all citizens of the United States "*may lawfully and without restriction,* by reason of the aforesaid state of war, manufacture and sell within the United States arms and munitions of war, and other articles ordinarily known as contraband of war; yet they cannot carry such articles upon the high seas for the use or service of either belligerent, . . . without incurring the risk of hostile capture."

On the outbreak of the late war between the United States and Spain, the British Government issued a proclamation of neutrality, and also instructions to the Lords Commissioners of the Admiralty, which enjoined due observance by British subjects of the rules embodied in Article VI. of the Treaty of Washington. In respect of Rule 2, there was no prohibition of the sale of contraband of war, which had been expressly authorized by President Grant; but in respect of the other features of the rules, British subjects were prohibited from building within her Majesty's dominions, or equipping, or increasing or augmenting the warlike equipment or warlike force of, a ship of either belligerent, or from fitting out any naval or military expedition against any friendly state. The instructions *prohibited the using, by "ships of war of either belligerent,"* of British ports or waters "as a station or place of resort for any warlike purpose, or for the purpose of obtaining any facilities for warlike equipment," or from taking in "any supplies, except provisions and such other things as may be requisite for the use of the crew, and except so much coal only as may be sufficient to carry such vessel to the nearest port of her own country or to some nearer destination"; or "from carrying prizes made by them into the ports and harbors" of the United Kingdom or of her possessions. The language of the instructions is in exact harmony with Rule 2.

Germany has issued no proclamations of neutrality during the

last twenty-five years, but the Foreign Office announced that strict neutrality would be observed toward the United States and Spain. The French proclamation announced scrupulous neutrality, and contained the main injunctions of international law with reference to the equipment and armament of belligerent war-ships and their permissible stay in French harbors, but no prohibition of the sale of contraband of war in the ordinary course of commerce.

The proclamation of Italy, a state which gives great attention to international law, contained elaborate injunctions upon the duties of neutrality with reference to the stay, the equipment, and the supply of belligerent war-ships with arms, ammunition, and provisions, in Italian ports; but contained no prohibition against the sale of contraband of war in the ordinary course of commerce.

No such prohibition is found in the carefully drawn proclamation of Japan; but the subjects of Japan were forbidden to supply "arms, ammunition, or other materials of direct use in fighting, to the men of war, or other ships used for warlike purposes or privateers belonging to either of the belligerent powers." The Russian proclamation contained injunctions on the duty of neutrality with respect to belligerent war-ships, but no prohibition on the sale of contraband of war in the ordinary course of commerce. No such prohibition was made by any one of the great civilized states which, with the United States, have created and settled, in the interests of the rights of peace and peaceful commerce, the principles of the law of nations.

Professor Lawrence in his work on the Law of Nations, published in 1895, well says:

"Every belligerent may capture goods of direct and immediate use in war, if he is able to intercept them on their passage to his enemy, in any place where it is lawful to carry on hostilities. But neutral merchants may trade in any ammunition and stores in time of war, as well as in time of peace. . . . . Whenever a trade in contraband of war reaches large dimensions, the state whose adversary is supplied by means of it is apt to complain. It reproaches the government of the offending vendors with neglect of the duties of neutrality, and argues that friendship and impartiality alike demand the stoppage of a traffic which supplies its foe with the sinews of war. But it invariably receives in reply a reminder that the practice of nations imposes no such obligation upon neutral Powers. They are bound to prevent the departure of armed expeditions from their shores, and the supply of fighting gear to belligerent vessels in their ports. When this is done, the utmost that can be expected of them in the matter of ordinary business transactions is, that

they shall warn their subjects of the risk run by carriers of contraband merchandise, and give notice that those who incur them will not be protected by the force or the influence of the state."

In 1896, Alfonse Rivier, the celebrated Swiss publicist, published his great work on the Law of Nations. In summing up the principles of neutrality, he states that the neutral state may not permit the arming, equipping, and manning of war-ships on its territory, for employment against one of the belligerents.

"*The government of a neutral state* is not allowed to furnish directly to the belligerents arms, munitions, provisions, ships of war." (Such a sale of arms was complained of as made by the Government of the United States to France in 1871 under a statute passed July 20, 1868, before the war broke out.) But he adds that, "*the citizens or inhabitants of the neutral state are free to sell all kinds of goods, in time of war as in time of peace, and especially to the belligerents, or either of them.*" He "is at liberty to follow his vocation, to transact business, to make money. This intention is not unlawful, and a war between two states ought to injure as little as possible the industries and commerce of a third state which is not engaged in the quarrel." But, on the other hand, "the belligerent has a right to prevent the commerce exercised to his prejudice by the subjects of neutral states in things useful in war. The neutral individual who sells arms and munitions of war to a belligerent does so at his peril . . . at the risk of confiscation of his merchandise as contraband of war."

As a matter of fact, the Government of the United States bought in Great Britain, during the late Spanish war, over a million dollars' worth of arms and munitions of war. Spain was known to be buying large quantities of munitions of war abroad; and neither belligerent made any complaint of it, or any attempt to prevent it. Bought in the ordinary course of commerce, nobody supposed that there was any violation of neutral duty by the governments who permitted their subjects to sell to any customers who came to their doors.

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